

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN ROYAL JOHNSON**, on February 4, 2003 at 3:00 P.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Royal Johnson, Chairman (R)  
Sen. Corey Stapleton, Vice Chairman (R)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Gary L. Perry (R)  
Sen. Don Ryan (D)  
Sen. Emily Stonington (D)  
Sen. Bob Story Jr. (R)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Services Division  
Marion Mood, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 277, 1/28/2003;  
SB 272, 1/28/2003  
Executive Action: SB 220

Note: The committee started taking executive action on SB 215, but stopped short of a vote because Sen. Stonington and Sen. Ryan had left.

#### **HEARING ON SB 277**

**Sponsor:** SEN. AUBYN CURTISS, SD 41, FORTINE

**Proponents:**      **Verner Bertelsen, MT Senior Citizens Assn. (MSCA)**  
                         **Jim Kembel, MT Assn. of Chiefs of Police**  
                         **Geoff Feiss, MT Telecommunications Assn.**  
                         **Bob Rowe, self**

**Opponents:**        **None**

**Opening Statement by Sponsor:**

**SEN. AUBYN CURTISS, SD 41, FORTINE**, stated she was bringing SB 277 to prohibit the use of automatic-announcing and predictive dialing devices because it was worrisome to answer the phone and find no one there, especially to the older population.

**Proponents' Testimony:**

**Verner Bertelsen, MT Senior Citizens Assn. (MSCA)**, rose in support of SB 277 as it was a simple way to avoid these artificial and mechanical calls from telemarketers.

**Jim Kembel, MT Association of Chiefs of Police**, stated the Police Chiefs were working on a mass-notification system in case of emergencies and would like to see inserted in the bill "calls made by a governmental public safety agency" on line 26, behind (iv) so they can make those calls without retribution.

**Geoff Feiss, MT Telecommunications Assn.**, also in support of SB 277, saying his members disliked these telemarketing scams as well, even though they got blamed for them sometimes.

**Bob Rowe, self**, thanked the sponsor for having worked diligently on this important issue.

**Questions from Committee Members and Responses:**

**SEN. BEA McCARTHY, SD 29, ANACONDA**, asked about the difference between automatic dialing and automatic messages, saying sometimes she got a real person talking to her first who then plugged in an automatic message; sometimes there was nothing but the automatic message. **Cort Jensen** explained under the law, there was a big difference between the two methods: it would not violate the current pre-recorded message standard if a person talked to you first. **SEN. McCARTHY** wondered if the bill could be amended so this could not be done, and **Mr. Jensen** confirmed that such an amendment could be added. He suggested adding the criminal code into the telemarketing code because currently, that was where the pre-recorded method prohibition was located.

**SEN. BOB STORY, SD 12, PARK CITY**, stated the Department of Revenue uses automatic dialing machine to elicit collections for their own as well as other state agencies, and he wondered if SB 277 would prohibit them from doing so. **Mr. Jensen** confirmed that it would since they were not exempted.

**CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS**, asked whether telemarketers were included in SB 277 which **Mr. Jensen** affirmed.

**SEN. MIKE TAYLOR, SD 37, PROCTOR**, noting the absence of opponents, inquired who was not included in this bill, and how long the seller's relationship with the person he was calling had to be. **Mr. Feiss** explained the bill mentioned "existing business relationships". **SEN. TAYLOR** redirected the question to **Mr. Kembel** who professed he did not know. **Ross Cannon, Direct Marketing Association**, came forward, saying he had no technical expertise with regard to this but had been asked to apprise the committee that these auto dialers were heavily regulated by the Code of Federal Regulations **EXHIBIT (ens24a01)**, stressing there was a vast web of regulations describing what interstate telemarketers could and could not do. He added these would pre-empt state law in any event except intra-state calls. He suggested the committee might try to tie Montana's regulations to the federal regulations for the purpose of uniformity. Lastly, he, too, professed inability to answer **SEN. TAYLOR's** question. He did, however, ask the committee to consider pulling the various telemarketing bills together into one bill.

**SEN. TAYLOR** was still looking for clarification of how long this business relationship had to be, and **Mr. Jensen** came forward and replied this bill did not specify a limit. **SEN. TAYLOR** then wondered whether a company could call him ten years after he had obtained a product warranty from them, which **Mr. Jensen** confirmed. **SEN. TAYLOR** recalled a bill from the previous session which prohibited the blocking of phone numbers; he felt it had not been successful and wondered what chance SB 277 had. **Mr. Jensen** explained the bill in question was not a total loss but could work better; oftentimes, telemarketers were successful in pleading ignorance because of the myriad of federal and state regulations as to when and where certain technological aids can be employed; having concise directives in statute would aid his office in enforcing the law. **SEN. TAYLOR** lauded SB 277 in that it prohibited the automatic dialing which left no one on the line if the phone was not picked up within a couple of rings; this was one aspect which was disconcerting because it left people wondering who had called. He wanted to make sure SB 277 made enforcement easier for the Consumer Protection Office. **Mr.**

**Jensen** claimed that sometimes these auto-dialers malfunction, calling the same number over and over again.

**SEN. COREY STAPLETON, SD 10, BILLINGS**, wondered if the sponsor would be willing to include representatives of political organizations on line 12 of the bill, alluding to persons doing so-called push polls during the last month of a political campaign. **SEN. CURTISS** replied she had not given this any consideration because those calls tend not to show up on the Caller ID but act as hang-ups. **SEN. STAPLETON** then asked about the effective date, and the sponsor admitted the bill drafter had omitted a date.

**SEN. STORY** inquired whether SB 277 applied to all telemarketers or merely those domiciled in Montana. **Mr. Jensen** replied it applied to anyone calling into or out of Montana.

**Closing by Sponsor:**

**SEN. CURTISS** closed on SB 277.

**HEARING ON SB 272**

**Sponsor:** **SEN. KEN TOOLE, SD 27, HELENA**

**Proponents:** **Debbie Smith, Northwest Resource Defense Council/  
Renewable Northwest Project (NRDC/RNP)**

**Opponents:** **John Fitzpatrick, NorthWestern Energy**

**Opening Statement by Sponsor:**

**SEN. KEN TOOLE, SD 27, HELENA**, opened by saying SB 272, fashioned after the Oregon model, required the default supplier to offer small customers a range of service options. He stated retail competition seemed to be slow in developing and with his bill, there would at least be some level of customer choice within the default supply.

**Proponents' Testimony:**

**Debbie Smith, NRDC/RNP**, professed she and her organization supported the Oregon-style bill which was one of several piece-meal bills purporting to fill in the void left by the repeal of HB 474. The latter had required the default supplier to offer a green product option which also contained in this bill. She suggested the committee might want to take action on these "piece-meal" bills even though many of the issues were covered in HB 509 because its fate and final version were uncertain. She

submitted an amendment, **EXHIBIT (ens24a02)**, for consideration by the committee which would make SB 272 consistent with HB 509 and briefly explained them. She asked that offering the green product be made mandatory because retail choice option across the country showed it was the one small customers gravitated towards.

#### **Opponents' Testimony:**

**{Tape: 1; Side: B}**

**John Fitzpatrick, NorthWestern Energy**, stated while he was not opposing the concept of SB 272, he felt it could be worded differently to be more consistent with the collaborative effort of HB 509 and still accomplish the goals the sponsor had in mind. He pointed to language in item (5) of an excerpt of HB 509, **EXHIBIT (ens24a03)**. He did see a problem with line 25 of the bill because he felt this definition should be handled by the Legislature rather than the PSC.

#### **Informational Testimony:**

**Bob Rowe, PSC**, stated while the provisions in SB 272 were fairly consistent with the relevant sections in HB 509, he did prefer the approach embedded in HB 509. He pointed out, however, that in Oregon, the small customer suppliers are still vertically integrated and under rate-of-return regulation whereas in Montana, the companies are vertically disintegrated as the default supplier is purchasing power in the wholesale market. He charged the retail service options which could be offered by the default supplier need not be products of the default supplier but could be products of a competitive supplier and simply offered through the former.

#### **Questions from Committee Members and Responses:**

**SEN. STORY** referred to the commissioner's last statement and asked why the default supplier should even be dabbling in this area; he was to be the supplier of last resort, and if a different choice was desired, the customer should find a supplier elsewhere. **Commissioner Rowe** offered a different perspective, namely if no competitive retail suppliers were offering these different products, and retail customers were interested in receiving more tailored products, it might be feasible to use the efficient distribution mechanism of the default provider as a way to make these products available; this approach would not be alluring, though, if direct retail choice was to happen quickly and the consumer had a variety of products available. However, if the present situation prevailed for a longer period of time, with just two competitive providers in the small customer market,

the approach he outlined above would be appealing. **SEN. STORY** wondered, if the default supplier was put in the position of providing these choices because they already had the infrastructure, would it not put them at a competitive advantage over someone else, and would anyone want to come in and compete under these circumstances. **Commissioner Rowe** agreed therein lay the risk; he drew a parallel to the telecommunications industry where the distribution company might be an efficient way for an alternative service provider to reach the mass market and in effect, they could be sharing the infrastructure and billing logistics.

**CHAIRMAN JOHNSON** asked whether this particular provision had been in statute before HB 474, was added to the latter and then lost again because of the initiative to repeal HB 474. **Commissioner Rowe** replied HB 474 did indeed require the default provider to offer an environmentally preferred product and other options. When it was repealed, the language remaining from SB 390 allowed, but did not require, the environmentally preferred product.

**SEN. STAPLETON** wanted to know how much more green power cost.

**SEN. TOOLE** admitted he was not certain but thought wind power was coming down to about 5 cents and asked to defer to **Ms. Smith** who informed the members wind power was at an average of 3 cents, depending on the site. She also told the committee, with regard to its green product, NorthWestern Energy was proposing so-called green tags which could be purchased for \$2 per block of 100 KW/hours; to put this in perspective, the average monthly use of homeowner customers was 1,000 kilowatt/hours per month, meaning this choice would be an additional \$20 on the monthly bill. She put this in contrast with Colorado where customers were being charged \$5 for the same blocks of power. **SEN. STAPLETON** surmised from her previous testimony the average customer preferred to pay the extra money for the green product. **Ms. Smith** claimed, given the low penetration rates for these voluntary retail choice programs, most utilities would be satisfied with 4 - 5% of the customer base. **SEN. STAPLETON** repeated she had said "most people" would choose this, and **Ms. Smith** explained that of the people who wanted something other than the normal service, most of them were willing to pay more for a green product. She compared it to people preferring and paying more for organic produce.

**SEN. STORY** wondered if "environmentally preferred" power meant power preferred by environmentalists, or if it was just another name for "green power". **Ms. Smith** advised the term renewable resources included nuclear and hydro-electric power; she suggested it referred to voluntary programs which allowed the consumer to pay more for a product which does not harm the

environment. "Environmentally preferred" was a term coined to distinguish among different kinds of renewable power which these premium priced products should be composed of.

**Closing by Sponsor:**

**SEN. TOOLE** felt there was a relatively small share of default customers who would be looking at these products; most people do not care where the power comes from but they do care about cost. He wanted to provide mechanisms to test and provide choice for the group desiring a green, or conservation-based product. He stressed it was important to look at component parts rather than putting all of the focus into one collaborative bill, like the upcoming HB 509, and asked the committee not to defer SB 272 because HB 509 might be a different bill by the time it got to this body.

**CHAIRMAN JOHNSON** inquired whether the sponsor had a chance to look at the amendments which had been offered during this hearing, and **SEN. TOOLE** said he had seen them and for the most part agreed, but expressed concern with the second amendment which tried to define renewable energy resources.

**EXECUTIVE ACTION ON SB 215**

**CHAIRMAN JOHNSON** recapped the committee had sent SB 215 to the floor with a "do not pass" recommendation, and it was sent back to the committee by that body.

**Motion/Vote:** **SEN. TOOLE** moved **SB 215 BE RECONSIDERED**. Motion carried unanimously.

**Motion:** **SEN. TOOLE** moved that **AMENDMENT SB021501.ATE BE ADOPTED, EXHIBIT (ens24a04)**.

**Discussion:**

**SEN. TOOLE** reminded the committee there had been some confusion as to the frequency of collection of the fee, and in order to clear this up, he proposed it to be an annual fee, as in items 1 through 7 of the amendment. He then discussed the remaining items in the amendment and stressed he had removed co-ops from the bill so they would not be charged the fee proposed in SB 215.

**SEN. MCCARTHY** asked what effect removal of the co-ops had on the Fiscal Note. **SEN. TOOLE** replied it would be significant. **SEN. STORY** commented he had never been able to get an annual fee for any right-of-ways he had granted, it had always been a one-time

payment for the damages and the use of the right-of-way. He also did not understand the rationale behind assessing utilities the fee because they were no longer regulated, and not the co-ops which were never regulated in the first place. Thirdly, he asked if there would be a cap on the fees assessed state trust lands and if that was a one-time fee or an annual lease; he also wanted to know if the only crossing of a state right-of-way was 60 feet, would an annual fee be assessed. **SEN. TOOLE** replied it would merit special consideration if only 60 feet were being crossed. As to the co-ops, he explained they had opted out of all requirements which private utilities were facing, and the rationale was not about whether they were regulated or not, it was the fact they were private, non-profit organizations which were working for "public benefit" and thus are granted many tax benefits.

**SEN. GARY PERRY, SD 16, MANHATTAN**, asked if the fees charged in SB 215 were a pass-through cost. **SEN. TOOLE** explained some of these utilities were common carriers who were transporting their product to people out-of-state or in-state and thus, it would be passed through to some Montana customers. He claimed SB 215 was more equitable and fair; the recipients of the service would bear some of the cost instead of everyone forgoing the opportunity to collect some kind of fee by granting indirect subsidies with free access to public lands.

**CHAIRMAN JOHNSON** asked the committee to stand at ease for five minutes so **SEN. RYAN** and **SEN. STONINGTON** could be found. When **SEN. RYAN** returned but **SEN. STONINGTON** did not, **CHAIRMAN JOHNSON** announced Executive Action on SB 215 would be continued on Thursday, Feb.6. He also reminded the committee it was not mandatory to post Executive Action but it had been done specifically in this case.

#### **EXECUTIVE ACTION ON SB 220**

**Motion:** **SEN. TAYLOR** moved **SB 220**.

**Motion:** **SEN. RYAN** moved that **AMENDMENT SB022001.asb** **BE ADOPTED**.

#### **Discussion:**

**SEN. DON RYAN, SD 22, GREAT FALLS**, explained this amendment turned option C into C-2 which the committee and the PSC had agreed to previously. The question arose as to which of the five districts were up for re-election next year, and it was determined that Commissioner Rowe was term-limited and now in the new District 4 where Matt Brainard was up for re-election;



Commissioner Stovall in District 2 was also up for re-election, and District 3 was open.

Before the vote, the same discussion arose as it had with regard to SB 215, namely that **SEN. STONINGTON** was absent. Some said the committee members should have made proxies available, it was not fair to the senators present hold up taking action. **CHAIRMAN JOHNSON** advised of a rule which permitted to hold a vote open for 24 hours.

**Vote:** Motion that **AMENDMENT SB022001.ASB BE ADOPTED** carried 9-0.

**Motion:** **SEN. STORY** moved **THAT MUSSELHELL COUNTY BE MOVED FROM DISTRICT 2 TO 3.**

**Discussion:**

**SEN. STORY** explained he was amending the bill because of the proximity of Cleveland, Musselshell, Golden Valley, and Mark County and that Musselshell fit in better with District 3. It would also make the population more equitable between the two districts.

**Motion/Vote:** **SEN. JOHNSON** moved that **SEN. STORY'S AMENDMENT BE ADOPTED.** Motion carried 8-1 with **STAPLETON** voting no.

**Motion:** **SEN. MCNUTT** moved that **SB 220 AS MENDED DO PASS.**

**Discussion:**

**SEN. RYAN** was still concerned about the potential imbalance between the regulated energy customers and voiced his opposition to the bill. **SEN. MCCARTHY** asked if he would be more comfortable with a map showing public utility versus co-op customers, and **SEN. TOOLE** advised he had received one but the problem was it was not broken down by counties. He admitted there might not be a big effect on the current balance but taking out Great Falls and adding Kalispell would make for a major change in his own district.

**Vote:** Motion that **SB 220 AS AMENDED DO PASS** carried 8-1 with **TOOLE** voting no.

**ADJOURNMENT**

Adjournment: 4:40 P.M.

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SEN. ROYAL JOHNSON, Chairman

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MARION MOOD, Secretary

RJ/MM

**EXHIBIT (ens24aad)**